

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference B14352.3 DB		FOR FURTHER ACTION		See Form PCT/IPEA/416																								
International application No. PCT/FR2004/050289		International filing date (day/month/year) 24.06.2004		Priority date (day/month/year) 27.06.2003																								
International Patent Classification (IPC) or national classification and IPC																												
Applicant COMMISSARIAT A L'ENERGIE ATOMIQUE																												
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>2</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <table><tr><td><input checked="" type="checkbox"/></td><td>Box No. I</td><td>Basis of the report</td></tr><tr><td><input type="checkbox"/></td><td>Box No. II</td><td>Priority</td></tr><tr><td><input type="checkbox"/></td><td>Box No. III</td><td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td></tr><tr><td><input type="checkbox"/></td><td>Box No. IV</td><td>Lack of unity of invention</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. V</td><td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VI</td><td>Certain documents cited</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VII</td><td>Certain defects in the international application</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VIII</td><td>Certain observations on the international application</td></tr></table>					<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand		Date of completion of this report																										
Name and mailing address of the IPEA/EP		Authorized officer																										
Facsimile No.		Telephone No.																										

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International application No.

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Box No. I	Basis of the report
1.	<p>With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.</p> <p><input type="checkbox"/> This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:</p> <p><input type="checkbox"/> international search (Rule 12.3 and 23.1(b))</p> <p><input type="checkbox"/> publication of the international application (Rule 12.4)</p> <p><input type="checkbox"/> international preliminary examination (Rule 55.2 and/or 55.3)</p> <p>2. With regard to the elements of the international application, this report is based on <i>(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)</i>:</p> <p><input type="checkbox"/> the international application as originally filed/furnished</p> <p><input checked="" type="checkbox"/> the description:</p> <p>pages <u>1-20</u> _____ as originally filed/furnished</p> <p>pages* _____ received by this Authority on _____</p> <p>pages* _____ received by this Authority on _____</p> <p><input checked="" type="checkbox"/> the claims:</p> <p>nos. _____ as originally filed/furnished</p> <p>nos.* _____ as amended (together with any statement) under Article 19 20.01.2005 with letter nos.* <u>1-7</u> _____ received by this Authority on <u>of 17.01.2005</u></p> <p>nos.* _____ received by this Authority on _____</p> <p><input checked="" type="checkbox"/> the drawings:</p> <p>sheets <u>1/4-4/4</u> _____ as originally filed/furnished</p> <p>sheets* _____ received by this Authority on _____</p> <p>sheets* _____ received by this Authority on _____</p> <p><input type="checkbox"/> a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.</p> <p>3. <input type="checkbox"/> The amendments have resulted in the cancellation of:</p> <p><input type="checkbox"/> the description, pages _____</p> <p><input type="checkbox"/> the claims, nos. _____</p> <p><input type="checkbox"/> the drawings, sheets/figs _____</p> <p><input type="checkbox"/> the sequence listing (specify): _____</p> <p><input type="checkbox"/> any table(s) related to sequence listing (specify): _____</p> <p>4. <input type="checkbox"/> This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).</p> <p><input type="checkbox"/> the description, pages _____</p> <p><input type="checkbox"/> the claims, nos. _____</p> <p><input type="checkbox"/> the drawings, sheets/figs _____</p> <p><input type="checkbox"/> the sequence listing (specify): _____</p> <p><input type="checkbox"/> any table(s) related to sequence listing (specify): _____</p>

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	5	YES
	Claims	1-4, 6, 7	NO
Inventive step (IS)	Claims		YES
	Claims	1-7	NO
Industrial applicability (IA)	Claims	1-7	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

1. In the present report, reference is made to the following documents:
D1: US 5 097 135 A (MAKINO TOHRU ET AL) 17 March 1992 (1992-03-17);
D2: FR-A-2 522 150 (STRAHLEN UMWELTFORSCH GMBH) 26 August 1983 (1983-08-26).
2. The present application fails to meet the requirements of **PCT Article 33(1)**, since the subject matter of **independent claim 1** does not comply with the criterion of novelty as defined by **PCT Article 33(2)**.
 - 2.1 In comparison to **claim 1**, D1 describes a method for metering a biological or chemical sample, comprising a step of illuminating the sample by means of a light beam from a source (cf. column 7, line 61 to column 8, line 11), which method further comprises the following steps;
 - an image is created including the image of the beam diffused by the sample (cf. column 8, lines 14 to 17);
 - the image is analysed according to reference criteria (cf. column 8, lines 17 to 19);
 - information specific to the interaction between

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>the light beam and the sample is retrieved (cf. column 10, lines 1 to 12);</p> <p>- the metered amount is calculated (cf. column 10, lines 13 to 15);</p> <p>said analysis consists in studying the spatial structure of the image and the distribution of the light energy in said image (cf. column 9, lines 54 to 58).</p>
2.2	<p>D1 is indeed considered to disclose an analysis of the image, since it describes how to obtain, for example, the calcium concentration by comparing image elements to other pre-recorded image elements (cf. column 10, lines 9 to 15). In particular, the analysis methods listed in the description (see page 12, last paragraph) are not included in said claim and moreover are regarded as standard.</p>
3.	<p>Dependent claims 2 to 4, 6 and 7 fail to meet the requirements of novelty of PCT Article 33(2).</p> <p>Dependent claim 5 does not comply with the criterion of inventive step as defined by PCT Article 33(3).</p>
3.1	<p>D1 also discloses the additional features of claims: 2 (cf. column 8, lines 25 to 29), 3 and 7 (cf. column 8, lines 20 to 23), 4 (cf. figure 3) and 6 (cf. column 2, lines 29 to 34).</p>
3.2	<p>The additional features of claim 5 are already known from D2 (cf. page 1, lines 4 to 11).</p>